**THE HON'BLE SRI JUSTICE BILAL NAZKI**

**AND**

**THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD**

**WRIT PETITION NO.5257 OF 2004**

**Dated 20-02-2007**

Between:
M/s Voltarc Electrodes Private Limited …Petitioner

And

The Commissioner of Commercial
Taxes and five others …Respondents

**THE HON'BLE SRI JUSTICE BILAL NAZKI**

**AND**

**THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD**

**WRIT PETITION NO.5257 OF 2004**

**O R D E R** *(Per the Hon'ble Sri Justice Bilal Nazki):*

The petitioner is a dealer in electrodes and registered with the Commercial Tax Department. Under incentive scheme, the petitioner was given sales tax exemption for a period of five years with effect from 1996. In the year 2003, the Deputy Commissioner of Commercial Taxes, Chittoor found that the petitioner had violated the conditions of final eligibility certificate and collected sales tax from customers contrary to the conditions in tax exemption. In terms of the exemption granted to the petitioner, he was supposed not to collect sales tax from his customers, but the Department found that the petitioner had collected an amount of Rs.34,49,908/- from customers and therefore, he was liable to pay back the said amounts to the Government as those amounts had been collected as sales tax. This is the admitted position of law that once tax is collected from the customers by a dealer by way of sales tax, it has to go to the Government. There is an exception, however, in the scheme framed by the State Government for granting incentives and one such exception is that certain dealers are given certain time to deposit the amounts collected by them towards the Government, which is now known as deferment scheme. Under

this scheme, the dealers collect the tax but do not remit it to the Government in terms of the provisions of the Andhra Pradesh General Sales Tax Act, but remit it after a fixed period, which is fixed by the authorities concerned at the time of grant of such eligibility. When the petitioner was given a show cause notice to remit the amounts collected by him by way of sales tax, he sought conversion of the incentive given to him from sales tax exemption to deferment. Obviously, the Government would not accept such a plea when the petitioner had misused the eligibility certificate granted to him for a period of five years. He was not supposed to collect any tax on account of sales tax in view of the eligibility certificate granted to him, but record shows that he collected sales tax for a period of five years, did not remit it to the Department, but after being caught, he just made an application for conversion. There is no ground stated in the writ petition or during the arguments of Mr.S.Ravi, learned counsel for the petitioner, which would entitle the petitioner for seeking a conversion. The only argument made is that such a concession was given to one M/s Rollex Paper Mills Limited, Bhimavaram. It is admitted in the counter-affidavit that eligibility certificate was given to Rollex Paper Mills Limited and they were exempted from sales tax with effect from 09-06-1999 till 08-06-2006. They made an application for conversion on 08-11-2001, which was allowed by the Government. We feel that Government had no power to allow such conversion as the dealer in that case had violated the conditions of exemption granted to him and after three years, the exemption could not be converted into deferment. But neither this issue is before us nor the Rollex Paper Mills Limited is a party to this writ petition. In this view of the matter, while dismissing the writ petition, as having no merit, we direct the Chief Secretary to call for the records pertaining to

M/s Rollex Paper Mills Limited, Bhimavaram and either conduct an enquiry himself or appoint an Officer to conduct an enquiry and examine whether the conversion given to M/s Rollex Paper Mills Limited, Bhimavaram was legal or not and pass appropriate orders. No order as to costs.

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(Bilal Nazki,J)

Dated 20th February, 2007

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(G.Bhavani Prasad,J)

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